IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 17026 of 2007(B)

PETITIONER:

PALIKANDU SABOOTTY, AGED 46 YEARS,
S/O. MAMMED, HILTOP, CHETTAMKUNNU P.O.,
THALASSERY.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

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1. THALASSERY MUNICIPALITY, REPRESENTED BY
ITS SECRETARY, THALASSERY.

2. STANDING COMMITTING (PLANNING),
REPRESENTED BY ITS CHAIRMAN,
THALASSERY MUNICIPALITY, THALASSERY.

3. TOWN PLANNING OFFICER,
THALASSERY MUNICIPALITY, THALASSERY.

BY ADV. SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.17026 of 2007

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Dated: 17th September, 2007

JUDGMENT

Heard Mr.T.M.Abdul Latiff, counsel for the petitioner and Mr.I.V.Promod, Standing Counsel who took notice on behalf of the Thalassery Municipality.

2. The grievance of the petitioner is that by Ext.P4 the application submitted by him for the construction of a building on the property belonging to him and comprised in Survey Nos.96/2, 97/3 and 98/3 of Thiruvangad Village within the area of the Thalassery Municipality was rejected by Ext.P4 on several reasons including the principal reason that the plot takes in a portion of the property which comes within the alignment of the 25 metre road as per the existing D.T.P.Scheme. Drawing my attention to Exts.P2 and P1 Mr.Latiff submits that the reason stated in Ext.P2 for rejecting an earlier plan submitted by the petitioner is the same reason. Counsel would submit that under Ext.P1 a portion of the property of the petitioner having an extent of 52.8800 Sq. Metres was already conveyed to the Government. Counsel argued that it is not at all fair on the part of the Municipality to reject the petitioner's application for building permit citing the very same reason. My attention was drawn by Mr.Latiff to

the Judgment of the Supreme Court in **Raju S.Jethmalani v. State of Maharashtra** [(2005) 11 S.C.C. 222] and the judgments of this court in **Padmini v. State of Kerala** (1999 (3) KLT 465) as well as **Francis v. Chalakudy Municipality** (1999 (3) KLT 560).

3. Concededly no notification under Section 4(1) of the Land Acquisition Act is in currency for the acquisition of any portion of the remaining properties of the petitioner. The scheme in question has been implemented to the extent necessary and no longer survives to be implemented to the extent it relates of the proposed 25 metre road. In any view, it is not disputed that no notification under Section 4(1) of the Land Acquisition Act is in currency as regards any portion of the petitioner's property. Under these circumstances, I follow the principles laid down in the three judgments referred to above and become inclined to grant relief to the petitioner. I quash Ext.P4 and direct the Municipality to pass fresh orders on the petitioner's application for building permit without being influenced by existence of the D.T.P.Scheme on condition that in case the respondents are able to facilitate the promulgation of a notification under Section 4(1) of the Land Acquisition Act for the acquisition of any portion of the petitioner's property within 9 months from today, the petitioner will not be entitled for any compensation for the building which he put up

on the basis of the permit to be issued to him as directed hereinabove. It is for the petitioner to see that the other three reasons mentioned in Ext.P4 are rectified by doing whatever is necessary. The first reason shall not be made a reason for rejecting the application for building permit. Fresh orders as directed above will be passed by the Municipality at the earliest and at any rate within one month of the petitioner filing an affidavit stating clearly that in the event of the Municipality promulgated a new notification under Section 4(1) of the Land Acquisition Act on any portion of his property, he will not claim any compensation for the building put up on the strength of the permit. It is made clear that even after the expiry of 9 months period mentioned hereinabove, it will be open to the Municipality to facilitate acquisition of the petitioner's property for any genuine public purpose. But under such an event the petitioner will be entitled for full compensation as per the Land Acquisition Act.

The Writ Petition is allowed as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**